

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FRANK ZAMFINO,

Plaintiff,

vs.

MAGGIE MILLER-STOUT, C/O
BAILEY, C/O JANE DOE, SGT.
RICHARDSON, SGT. SMITH, and
SGT. CARPENTER,

Defendants.

NO. CV-04-232-CI

ORDER DENYING MOTION TO VACATE
DISMISSAL WITH PREJUDICE . . .

This action was dismissed with prejudice and judgement was entered on February 15, 2005 (Ct. Recs. 16 and 17). There is no record Mr. Zamfino filed an appeal to the Ninth Circuit Court of Appeals.

On July 8, 2005, Mr. Zamfino filed a "Motion to Vacate Dismissal With Prejudice and Order to Dismiss Without Prejudice." He requests oral argument. The court determines oral argument is not warranted and has considered the motion without oral argument on the date signed below. See LR 7.1(h)(3), Local Rules for the Eastern District of Washington.

After review of Mr. Zamfino's motion and the record in this case, **IT IS ORDERED** the Motion (Ct. Rec. 18) is **DENIED**. Nothing in the

1 record reflects any evidence of "mistake, inadvertence, surprise, or
2 excusable neglect," or "any other reason justifying relief from the
3 operation of the judgment." Fed. R. Civ. P. 60(b)(1), (6); *see also*
4 *Hamilton v. Newland*, 374 F.3d 822, 825 (9th Cir. 2004) (Rule 60(b)(6)
5 is available only where extraordinary circumstances prevented a party
6 from taking timely action to correct an erroneous judgment). Mr.
7 Zamfino has made no such showing.

8 **IT IS SO ORDERED.** The District Court Executive is directed to
9 enter this Order, forward a copy to Plaintiff and close the file.

10 **DATED** this 8th day of August, 2005.

11
12 s/ Fred Van Sickle
13 Fred Van Sickle
United States District Judge